

December 1, 2006

NOTICE OF MODIFIED CHANGES TO 45 DAY TEXT

CHIEF PROBATION OFFICERS, PRESIDING JUDGES OF THE SUPERIOR COURT, PRESIDING JUVENILE COURT JUDGES, JUVENILE JUSTICE AND DELINQUENCY PREVENTION COMMISSIONS, JUVENILE STANDARDS REVISION EXECUTIVE STEERING COMMITTEE AND WORK GROUP MEMBERS, COUNTY JUVENILE FACILITY MANAGERS AND SUPERINTENDENTS, AND OTHER INTERESTED PARTIES.

Pursuant to Welfare and Institutions Code Sections 207.1, 210, 210.2, and 885, and Penal Code Section 6030, the State Corrections Standards Authority (CSA) hereby gives notice of proposed regulatory actions. It is the intent of the CSA to amend the regulations contained in Title 15, Division 1, Chapter 1, Subchapter 5, California Code of Regulations (known as the *Minimum Standards for Local Juvenile Facilities*).

Forty-three workgroup members with extensive juvenile justice related backgrounds participated in the 2006 Juvenile Revision and Review of the 169 regulations contained in Title 15 and 24, Minimum Standards for Local Juvenile Detentions Facilities. The CSA met on March 16, 2006 and authorized staff to proceed with the public hearing process. A 45-day public comment period began on July 28, 2006 and ended on September 25, 2006. In addition, two public hearing were held during this time period; one at the Orange County Probation Training Center in Santa Ana on August 23, 2006 and one at the CSA office in Sacramento on September 25, 2006.

During this public comment period, eight comments were received regarding the proposed changes to Title 15 regulations. Due to the comments received, the Management Workgroup was reconvened on November 1, 2006 at the CSA office to re-examine the following regulations, which the public commented upon:

- Section 1361 – Grievance
- Section 1363 – Use of Reasonable Force to Collect DNA Specimens, Samples, Impressions
- Section 1370 – Education
- Section 1374 – Visiting
- Section 1377 – Access to Legal Services

The Executive Steering Committee was reconvened on November 14, 2006 to receive the recommendations provided by the Management Workgroup. The Executive Steering Committee approved the proposed changes as submitted for Sections 1361, 1374 and 1377. The Management Workgroup did not recommend modification to Sections 1370 or 1374. The following strike out and underline text contains the proposed changes:

Section 1361. Grievance Procedure.

The facility administrator shall develop written policies and procedures whereby any minor may appeal and have resolved grievances relating to any condition of confinement, including but not limited to health care services, classification decisions, program participation, telephone, mail or visiting procedures, and food, clothing, or bedding. Policies and procedures shall include provisions whereby the facility manager ensures:

(a) a grievance form and instructions for registering a grievance, which includes provisions for the minor to have free access to the form ~~and;~~

~~(b) the minor shall have the option to confidentially file the grievance confidentially~~
~~or~~ to deliver the form to any child care supervision staff working in the facility;

~~(bc)~~ resolution of the grievance at the lowest appropriate staff level;

~~(ed)~~ provision for a prompt review and response to grievances within a specified time limit;

(1) The minor may elect to be present to explain his/her version of the grievance to a person not directly involved in the circumstances which led to the grievance.

(2) Provision for a staff representative approved by the facility administrator to assist the minor.

~~(de)~~ provision for a written response to the grievance which includes the reasons for the decisions; and,

~~(ef)~~ a system which provides that any appeal of a grievance shall be heard by a person not directly involved in the circumstances which led to the grievance.

Whether or not associated with a grievance, concerns of parents, guardians, staff or other parties shall be addressed and documented in accordance with written policies and procedures within a specified timeframe.

NOTE: Authority cited: Sections 210 and 885, Welfare and Institutions Code; and Assembly Bill 1397, Chapter 12, Statutes of 1996. Reference: 1995-96 Budget Act, Chapter 303, Item Number 5430-001-001, Statutes of 1995; Assembly Bill 904, Chapter 304, Statutes of 1995; and Assembly Bill 1397, Chapter 12, Statutes of 1996

Section 1363. Use of Reasonable Force to Collect DNA Specimens, Samples, Impressions.

(a) Pursuant to Penal Code Section ~~295298.1-et. sec.~~ authorized law enforcement, custodial, or corrections personnel including peace officers, may employ reasonable force to collect blood specimens, saliva samples, and thumb or palm print impressions from individuals who are required to provide such samples, specimens or impressions pursuant to Penal Code Section ~~295-et. sec.296~~ and who refuse following written or oral request.

(1) For the purpose of this regulation, the “use of reasonable force” shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this regulation.

(2) The use of reasonable force shall be preceded by efforts to secure voluntary compliance. Efforts to secure voluntary compliance shall be documented and include an advisement of the legal obligation to provide the requisite specimen, sample or impression and the consequences of refusal.

(b) The force shall not be used without the prior written authorization of the supervising officer on duty. The authorization shall include information that reflects the fact that the ~~offender-individual~~ was asked to provide the requisite specimen, sample, or impression and refused.

(1) If the use of reasonable force includes a cell extraction, the extraction shall be videotaped, ~~including audio~~. Video shall be directed at the cell extraction event. The videotape shall be retained by the agency for the length of time required by statute. Notwithstanding the use of the video as evidence in a ~~criminal-court~~ proceeding, the tape shall be retained administratively.

(2) ~~By the 10th of the month~~ Within 10 days of following the use of reasonable force pursuant to this regulation, the facility administrator shall send a report to the Corrections Standards Authority, documenting a refusal to voluntarily submit the requisite specimen, sample or impression; the use of reasonable force to obtain the specimen, sample or impression, if any; the type of force used; the efforts undertaken to obtain voluntary compliance; and whether medical attention was needed by the ~~detainee-juvenile offender~~ or other person as a result of reasonable force being used.

~~(c) If reasonable force is required in the collection of the required DNA specimen, a blood sample will be collected by qualified medical personnel.~~

NOTE: Authority cited: Section 295, et sec Sections 210 and 885, Welfare and Institutions Code; and Assembly Bill 1397, Chapter 12, Statutes of 1996. Reference: 1995-96 Budget Act, Chapter 303, Item Number 5430-001-001, Statutes of 1995; Assembly Bill 904, Chapter 304, Statutes of 1995; ~~and~~ Assembly Bill 1397, Chapter 12, Statutes of 1996, and Section 1452, Title 15, California Code of Regulations - Collection of Forensic Evidence.

Section 1377. Access to Legal Services.

The facility administrator shall develop written procedures to ensure the right of minors to have access to the courts and legal services. Such access shall include:

- (a) access, upon request by the minor, to licensed attorneys and their authorized representatives;
- (b) provision for confidential consultation with attorneys; and,
- (c) unlimited postage-free, legal correspondence and cost free telephone access as appropriate.

NOTE: Authority cited: Sections 210 and 885, Welfare and Institutions Code; and Assembly Bill 1397, Chapter 12, Statutes of 1996. Reference: 1995-96 Budget Act, Chapter 303, Item Number 5430-001-001, statutes of 1995; Assembly Bill 904, Chapter 304, Statutes of 1995; and Assembly Bill 1397, Chapter 12, Statutes of 1996.

15-DAY WRITTEN COMMENT PERIOD

This announcement serves as notice of modified changes to the 45-day text as required in Section 44, Title 1, California Code of Regulations and provides opportunity for all interested parties to comment in writing during this 15-day public comment period regarding the proposed revisions noted above, prior to the finalization and formal adoption by the CSA during the January 11, 2007 CSA Board meeting. Comments, recommendations, or suggestions regarding the proposed actions are encouraged.

We invite any interested person, or their authorized representative, to submit written comments relevant to these proposed regulatory actions to the CSA. Proposed changes to these three sections of the Title 15 juvenile regulations can be reviewed at the CSA website (<http://www.csa.ca.gov>). If you do not have access to the Internet, you can submit a written request to Gary Wion or Rebecca Craig (contact information listed below). In addition, written comments may be submitted electronically via the Internet to the CSA. Click on the hyperlink for Public Comment Period and follow the instructions.

All written comments must be received no later than 5:00 p.m. on December 15, 2006. Written comments regarding the *Minimum Standards for Juvenile Facilities* should be directed to:

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600 Bercut Drive
Sacramento, California 95814
(916) 324-1641
gary.wion@cdcr.ca.gov

Rebecca Craig, Field Representative
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We look forward to your input and participation in this process.

Sincerely,

Robert J. Takeshta
Deputy Director
Facilities Standards and Operations Division